

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

PERRIS UNION HIGH SCHOOL DISTRICT.

CASE NO. 2023100314

DECISION

FEBRUARY 14, 2024

On October 10, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Perris Union High School District. OAH continued the hearing in this matter on November 20, 2023. Administrative Law Judge Christine Arden heard this matter via videoconference on December 12, 13, 14, 19, 20, 21, and 22, 2023.

Attorney Robert Burgermeister represented Student. Parents attended all hearing days on Student's behalf. Attorneys Rebecca Diddams, Austin Jones, and Dee Anna Hassanpour represented Perris Union High School District. Amil Alzubaidi, Director of Special Education, attended all hearing days on Perris Union High School District's behalf, except for December 21 and 22, 2023.

At the parties' request, the matter was continued to January 22, 2024, to provide time for them to submit their written closing briefs. The record was closed, and the matter was submitted on January 22, 2024.

## ISSUES

The issues at the due process hearing are stated below. Perris Union High School District is called Perris District. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Perris District deny Student a FAPE in the 2021-2022 school year, in the IEP dated February 10, 2022, by:
  - a. failing to offer a one-to-one aide;
  - b. failing to offer an appropriate individual transition plan;
  - c. failing to offer appropriate goals in the areas of math, writing, and transition;
  - d. failing to offer an extended school year program for summer 2022; and
  - e. predetermining the offer of a FAPE by failing to consider Parent's request for tutoring services?
2. Did Perris District deny Student a FAPE in the 2022-2023 school year, in the IEP dated February 27, 2023, by:
  - a. failing to offer a one-to-one aide;
  - b. failing to offer an appropriate individual transition plan;
  - c. failing to offer counseling services;

- d. failing to offer an extended school year program for summer 2023; and
- e. predetermining the offer of a FAPE by failing to consider Parent's request for tutoring services?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed.

Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case Student requested the hearing and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At the time of hearing Student was 17 years old and in 11th grade at Liberty High School, a school within Perris District. Student resided within Perris District's geographic boundaries at all relevant times. Student was eligible for special education under the category of other health impairment.

## LEGAL FRAMEWORK UNDER THE IDEA

A FAPE means special education and related services meeting state educational standards available to an eligible child at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034] (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*))

ISSUE 1(a): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR IN THE IEP DATED FEBRUARY 10, 2022, BY FAILING TO OFFER A ONE-TO-ONE AIDE?

Student contends Perris District denied her a FAPE by failing to offer a full-time one-to-one aide. Student contends she required a one-to-one aide throughout the school day to explain academic concepts confusing to Student in order to access her education.

Perris District contends it would have been inappropriate, and possibly even harmful to Student, to provide her with a one-to-one aide. It argues Student did not have behavioral or attention issues that required the support of a one-to-one aide in any setting. Perris District contends Student accessed her education with the specialized academic instruction, supports and accommodations it offered Student in the February 10, 2022 IEP. Perris District further contends Student's passing grades in general education classes establish Student accessed her education during the 2021-2022 school year without one-to-one aide assistance.

The U.S. Supreme Court determined a FAPE must provide a basic floor of opportunity giving the child access to specialized instruction and related services which are individually designed to provide educational benefit to the disabled child. (Rowley, *supra*, 458 U.S. at p. 201.) The court further held the IDEA does not require a school district to provide an eligible child with every special education service necessary to maximize each disabled child's potential. (Rowley, *ibid.*, at 458 U.S. at p. 199.) An appropriate education does not mean the absolute best education or a potential-maximizing education for the individual child. (Rowley, *ibid.*, 458 U.S. at 197 n. 21.)

No one test exists for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at p. 202.) For a child fully integrated in the regular classroom, an IEP typically should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. However, not every child advancing from grade to grade is automatically assumed to have received a FAPE. (*Rowley, supra*, 458 U.S. at p. 203-204, fn. 25.)

The U.S. Supreme Court has opined that in determining whether an offered program constituted a FAPE, a court must make a twofold inquiry: first, whether the school district complied with the procedures set forth in the IDEA, and second, whether the IEP developed and offered to Student pursuant to those procedures was "reasonably calculated to enable the child to receive educational benefits." *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1034 (*Fuhrman*), citing *Rowley, supra*, 458 U.S. at p. 206–07.

To meet its substantive obligation under the IDEA a school must offer an IEP reasonably calculated enable a child to make progress appropriate in light of the child's circumstances. (*Endrew F., supra*, 580 U.S. at p. 399.) Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. (*Id.* at p. 404.) Moreover, for a child who is not fully integrated in the regular classroom and not able to achieve on grade level, the child's educational program must be appropriately ambitious in light of his circumstances. (*Id.* at p. 402.)

A school district's actions cannot be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for appropriateness, an IEP must take into account what was objectively reasonable to the IEP team at the time the snapshot was taken, that is, at the time the IEP was drafted. (Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141, 1149 (Adams), citing the concurring opinion in (Fuhrmann, supra, 993 F.2d at 1041.) Thus, in this case it is appropriate to examine the adequacy of the relevant IEPs at the time they were drafted and offered to Student.

## STUDENT'S BACKGROUND

Student was born with a chromosomal abnormality that impacted the time it took her to process academic concepts and limited her ability to sustain focus. Consequently, in some academic subjects Student needed extra time to master concepts, complete assignments, and take tests.

Student was initially found eligible for special education when she was nine years old and enrolled in another school district. Student first enrolled in Perris District in the beginning of the 2021-2022 school year. Student had minor restrictions in physical education class, which prevented her from doing activities requiring arm rotations. However, as of February 2022, Student was otherwise in good medical standing and had no other health issues that interfered with her educational performance. Student did not have behavior, communication, or social deficits.

In the 2020-2021 school year, Student attended ninth grade at Vista High School, called Vista, a school in another school district. The instruction at Vista that school year was delivered through a hybrid of in-person and remote, virtual instruction. Mother

testified Student did not do well academically in school that year. In February 2021, Student's family relocated to a home within the Perris District. However, Student continued to attend Vista during the entire 2020-2021 school year. Student's academic performance was inconsistent and poor in certain subjects during the 2020-2021 school year.

Student enrolled in Perris District and started there with an IEP from her previous school district. When enrolling Student in Liberty High School in the Perris District at the beginning of the 2021-2022 school year, Parents requested Student be allowed to repeat the ninth grade because Student had performed poorly in academics during the prior school year. Perris District agreed to Parents' request, and Student was enrolled as a ninth grader for a second time during the 2021-2022 school year.

During the 2021-2022 and 2022-2023 school years, Student was enrolled in general education classes, except for a study skills class, which was specialized academic instruction taught by a credentialed special education teacher. Student had no behavior or social problems during those two school years. There was no evidence that anyone, including Parents, ever asked that a one-to-one aide be considered for Student. Student took courses on the high school diploma track in both the 2021-2022 and 2022-2023 school years. Student's IEPs and transcript of high school courses established Student was always on a diploma track throughout high school.

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## IEP DATED FEBRUARY 10, 2022

On February 10, 2022, when Student was 15 years old and in ninth grade at Liberty High School, her Perris District IEP team met for the purpose of reviewing Student's annual IEP and developing an offer of a FAPE for the upcoming year. Student and Parents attended that meeting, along with

- general education teacher, Jay Nalaboff;
- special education teacher and Student's case carrier, Adam Contreras;
- administrator, Mark Harrell;
- counselor intern, Kanani Hoopai; and
- school psychologist, Jose Jones.

At that meeting, Parents inquired about tutoring options available to Student. The team responded to Parents' request by providing Parents with information about an online tutoring service available to all Perris District pupils called "Paper." The Paper tutoring service was free to all district pupils and was staffed by credentialed teachers and available to students seven days a week, 24 hours a day. No IEP team members, either at the IEP team meeting or at hearing, provided either a reason why the Paper online tutoring service would not have been an appropriate general education support for Student, or a reason why Student would not be able to access it. Mother testified Student sometimes went for in-person tutoring before school with a Perris District math teacher.

Nalaboff, Student's ninth grade science teacher, reported to the IEP team that Student was a hard worker and a pleasure to have in his class. This was consistent with the reports from Student's other teachers to the IEP team about Student's conduct in

their classes. Student had appropriate communication skills and interacted appropriately with both adults and peers. Student could advocate for herself and convey her wants and needs to school staff. Her gross and fine motor skills were age appropriate, and Student did not need assistive technology devices to access the curriculum. Student had no behavioral deficits and the team determined Student did not require a behavior intervention plan.

The IEP team recognized Student required extra time to complete assignments and tests. The team further noted Student could take care of her own daily needs. By February 10, 2022, Student met her last annual math goal, and partially met her last annual writing goal. However, Student needed continued support in her Algebra 1 class, and with the content of her writing. The team also recognized Student needed support with planning for her post-secondary education and a career. At the meeting, Student told the team she was interested in a digital media career.

The team discussed new proposed annual draft goals for Student for the upcoming year. After discussion and revision of the proposed draft goals, the team agreed on three new goals for Student for the 12-month period beginning on February 11, 2022, in algebra and writing, and for planning for a post-secondary education and career. The team also determined that regression over the summer break from school was not a concern for Student, so she did not qualify for, and was not offered, an extended school year program for summer 2022.

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The IEP team considered the full continuum of placement options available within a comprehensive public high school, except for a separate class with specialized academic instruction using an alternative curriculum, called a special day class, which would not have been appropriate for Student. By the end of the February 10, 2022 meeting, the IEP team made the following offer of a FAPE to Student:

- annual goals in algebraic thinking, supporting details in writing, and career interest;
- an individual transition plan with two post-secondary goals, one each in the areas of education, and employment, which were linked to the annual goal in career interest;
- access to the Learning Center to work on assignments and take tests;
- access to preferential seating;
- extra time allowed to complete assignments, and take quizzes and tests;
- 253 minutes weekly of group specialized academic instruction, which consisted of a study skills class taught by a credentialed special education teacher;
- consultation service between Student's general education teachers and Student's special education teacher/case carrier;
- 40 minutes yearly of college awareness service provided in a special education class;
- 40 minutes yearly of career awareness service provided in a special education class;

- no extended school year program since Student did not demonstrate significant academic regression, and/or limited recoupment of skills during extended school breaks; and
- extra time for state and district wide assessments.

The above-described program kept Student outside of the regular classroom for 15 percent of the school day, and in the regular classroom for 85 percent of the school day at Student's school of residence, Liberty High School. The team anticipated Student would earn enough credits for her high school diploma by June 2025. Therefore, Student would graduate on time with her class, not including her repetition of the ninth grade taken at her previous school district. The team generally identified Student's anticipated future courses through graduation. The team also notified Student and Parents that Student's progress and promotion was based on Perris District's promotion criteria, which would be applied each semester.

## TESTIMONY OF DR. SOOKYANG SHIN WAS NOT PERSUASIVE

Student called Dr. Sookyung Shin, a special education consultant and advocate, to testify at hearing. Shin testified she was hired to give an opinion on whether Perris District complied with special education laws regarding Student. Shin stated her opinion was based upon her knowledge of the law. However, Shin did not attend law school and is not an attorney. Shin holds no professional certifications in special education, psychology, teaching, pupil personnel services, or educational administration in either California, or any state. Shin stated she relied on a checklist when she formed

her opinion, but did not identify what was on that checklist or the origin of that checklist. Shin testified she had reviewed over 300 IEPs for children residing in multiple states. She did not specify the reason why she reviewed those IEPs. However, it was a reasonable inference Shin reviewed those IEPs while consulting with families.

Since 2010, Shin, who speaks Korean, as well as English, primarily worked in special education as a consultant to Korean American parents of children with autism spectrum disorder. Shin taught those parents how to advocate for their children. Shin had a master's degree in special education, and in 2023, Shin earned a doctoral degree in special education from the University of Kansas. Shin had professional experience as a grant writer for various organizations.

From 2017 through the hearing, Shin was employed primarily as a certified nurse aide and a certified medication aide at an assisted living facility for elderly patients located in Lawrence, Kansas. Shin never taught special education, or general education, at a public or private school. Shin was never employed at a public school district in any professional capacity, except as a grant writer for the Kansas State School for the Blind. Shin hopes to receive an early childhood teaching license from the Kansas Department of Education in 2024. At the time of hearing, Shin did not hold a teaching or school psychologist certification in any state. Since 2006, Shin volunteered at various organizations to advocate for children with disabilities and their parents. Student paid Shin to give testimony in this case.

To prepare for her testimony, Shin reviewed the documents uploaded to the Case Center electronic evidence program as potential hearing exhibits in this matter. Shin also reviewed the due process request filed in this case. This did not constitute a thorough review of Student's educational records. Shin met with Parents in a virtual

meeting for about three hours shortly before the hearing started. Student joined that meeting for a little less than an hour. At least one parent was present during the virtual meeting the entire time Shin interacted with Student. Shin considered her brief time with Student to constitute Shin's informal assessment of Student, although there was no evidence Shin had any professional experience conducting special education assessments of secondary school students. Shin testified Student's disability was accurately described in the two IEPs she reviewed.

Shin acknowledged all children, even those without disabilities, could obtain some benefit from having a one-to-one adult aide assist them at school. Some of Student's teachers from Perris District also opined that everyone in a school setting would likely get some benefit from the attention of a one-to-one aide. However, the law does not require schools to offer children eligible for special education all services from which they could possibly receive maximum benefit. (*Rowley, supra*, 458 U.S. at 197, n. 21.)

Shin first testified Student needed a one-to-one aide in mathematics because that class moved too fast for Student. Then, Shin backtracked on that opinion and testified there might be a stigma attached to Student having a one-to-one aide in high school, and that a one-to-one aide could negatively impact Student socially and emotionally. Shin acknowledged Student's social-emotional status had to be considered in determining if a one-to-one aide should be offered to Student, even during one class. Then Shin testified Student really just needed a learning specialist to check in with Student two or three times a week for 20 to 30 minutes to see how she was doing in her math class. Shin was unfamiliar with the study skills class and the Learning Center at Liberty High School. Student received individual help with her academic assignments both in her study skills class and in the Learning Center.

Shin acknowledged Student had many friends at school and was a very social teenager. Shin admitted she was unfamiliar with the options for tutoring available to children attending the Perris District. Shin opined Student would do best with one-to-one in-person tutoring, instead of online tutoring, because Student might get frustrated if she could not access the online tutoring service. This was a curious opinion because so much of contemporary education requires accessing online resources. Mother testified that, even though she was provided a link to access the Paper tutoring program, Student could not access it because Student forgot her password. This was a minor technical problem that could have been readily solved by Student either writing down her password, or asking for help from Student's case carrier. However, there was no evidence Student or Parents ever conferred with any school staff members about Student's forgotten password for the Paper tutoring program.

Shin testified Student would benefit from a one-to-one aide, even if Student switched to a specialized academic instruction math class. Shin then inconsistently stated Student would not need an aide in the study skills class, even though Shin admitted she was not familiar with the content of that class. Shin's opinions were inconsistent and were often based on inaccurate or incomplete information. Shin did not observe Student in school, and did not speak with any of Student's teachers or case carrier. Shin did not review any prior assessments of Student. Moreover, Shin admitted on a number of points that she was unfamiliar with Student's needs in various areas, class content, and programs and services available to both pupils with IEPs and those in general education at the Perris District. Shin's inconsistent testimony and reliance on incomplete and inaccurate information undermined the credibility of all her opinions. Moreover, despite Shin's doctoral degree in special education, it was unclear what

experience or expertise she had, if any, that were relevant to the issues in this case. For the foregoing reasons, Shin's testimony was not persuasive and was given little weight.

## THE EVIDENCE DID NOT SUPPORT STUDENT'S NEED FOR A ONE-TO-ONE AIDE

None of the witnesses, including Shin, testified Student needed a full-time, one-to-one aide to access her curriculum or to make reasonable progress on her goals. Even Shin admitted a one-to-one aide might cause Student to suffer from a social stigma, which would be detrimental to Student's social-emotional well-being. Student had no behavior problems, was diligent in completing assignments both at school and at home, and was making academic progress with the general education and special education supports Perris District offered. All evidence presented showed Student did not need a full-time one-to-one aide on February 10, 2022, when the IEP was offered.

There was no evidence Student was ever provided a one-to-one aide in school, assessed to determine if she needed a one-to-one aide, or that aide service was ever considered by an IEP team as a necessary related service for Student. There was also no evidence that Parents requested Student be given a one-to-one aide at the February 10, 2022 IEP meeting, or at any other time. Mother testified she asked for individual help for Student at some IEP meeting, but she did not remember at which meeting she made that request.

The evidence established Student was a responsible and hard-working student with no behavior problems and good communication skills. She successfully completed her classwork and homework with the placement, services, and accommodations offered in her February 24, 2021 IEP. There was no reason to offer Student such an intrusive



service as a one-to-one aide in February 2022. In fact, there was evidence that appointment of a one-to-one aide for Student could have created a social stigma for her, and would likely undermine her positive social relationships with peers at school.

### CONCLUSION ON ISSUE 1(a)

The evidence was clear that on February 10, 2022, Student did not require a one-to-one aide to access her curriculum and make reasonable progress in light of her circumstances. Consequently, Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2021-2022 school year by failing to offer her a one-to-one aide in the February 10, 2022 IEP. Therefore, Perris District prevailed on Issue 1(a).

### ISSUE 1(b): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR IN THE IEP DATED FEBRUARY 10, 2022, BY FAILING TO OFFER AN APPROPRIATE INDIVIDUAL TRANSITION PLAN?

Student contends Perris District denied her a FAPE by failing to offer her an appropriate individual transition plan because the plan offered was not based on a formal transition assessment given to Student before the plan was developed. Student also contends the annual and post-secondary transition goals were inappropriate. Student further contends the services provided to support the individual transition plan were inadequate.

Perris District contends it offered Student an appropriate, thoughtfully developed individual transition plan. Perris District further contends Student's case carrier conducted a transition assessment of Student before the plan was developed and offered in February

2022. Perris District further contends the services offered in the individual transition plan, along with the annual career interest goal and the two post-secondary goals offered, were appropriate for Student.

The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1); 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,

- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education, if provided as specially designed instruction, or related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Simply put, the IDEA requires IEPs for older students to include a plan for a coordinated set of services designed to move special education students successfully from high school to post high school settings. Transition plans help students gain skills they will need when they graduate from high school or age out of special education at age 22. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training. Such services also prepare students to eventually live as autonomously as possible, given the extent of their disabilities.

Transition goals vary from other annual goals. Transition goals reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).) In contrast, other annual goals state measurable standards by which the district's program for the child will be measured by the end of the next twelve months. (20 U.S.C. § 1414(d)(1)(A)(i)(II).) Transition goals also address a child's career or post-secondary education after graduation. Obviously, progress on post-secondary goals cannot be measured while a child is still in high school.

The adequacy of the transition plan and services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v.*

*Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.) A flawed or missing transition plan is generally regarded as a procedural error. (*Board of Educ. v. Ross* (7th Cir. 2007) 486 F.3d 267, 276. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
3. caused a deprivation of education benefits. (20 U.S.C. § 1415(f)(3)(E)(iii); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

When a transition plan fails to comply with the procedural requirements, but the individual transition plan or the IEP provides a basic framework sufficient to ensure that the student receives transition services that benefit the student's education, the procedural violation is harmless. (*Virginia S. v. Dept. of Education* (D. Hawaii, Jan. 8, 2007, Civ. No. 06-00128 JMS/LEK) 2007 WL 80814, \*10.) Therefore, a transition plan that is procedurally deficient but does not result in a loss of educational opportunity, does not result in a denial of FAPE.

## THE INDIVIDUAL TRANSITION PLAN IN THE FEBRUARY 10, 2022 IEP WAS APPROPRIATE

Starting in November 2021, special education teacher, Contreras, who was Student's case carrier and study skills teacher during the 2021-2022 school year, administered a transition assessment to Student. This assessment consisted of an in-

depth survey/questionnaire about a wide variety of careers, and an interview of Student regarding her interests and preferences. That transition assessment resulted in a robust list of potential careers of interest to Student. Contreras worked with Student to reduce that list to three possible career choices for Student to research. Student expressed her interest in a career in digital media arts, particularly a career in anime production. During the 2021-2022 school year, Student took an elective class entitled Introduction to Digital Media, so she already had significant exposure to the field.

Contreras then developed an individual transition plan that was proposed at the February 10, 2022 IEP team meeting. The plan included two post-secondary goals for Student to achieve upon her high school graduation. The first post-secondary goal was for Student to research careers and programs in the digital media industry. The second post-secondary goal was for Student to work on her interviewing skills. Those post-secondary goals were based on the results of Contreras' transition assessment and reflected the specific post-secondary interests Student expressed from November 2021 through February 2022. Those two post-secondary goals were properly linked to Student's annual goal in the area of career interest. Student's annual goals are addressed in the next section of this Decision.

Both Student and her Parents attended the February 10, 2022 IEP team meeting and actively participated in finalizing the individual transition plan, which was tailored to meet Student's post-high school interests at that time. After February 10, 2022, when the offered transition plan became part of Student's IEP, Contreras worked with Student on a variety of transition related activities during her study skills class. Under Contreras' direction and guidance, Student researched the three careers on her short list. Contreras met with Student individually at least six times in the 2021-2022 school year to work on

her annual goal in the area of career interest, which addressed Student's college and career readiness, choices, and preferences, and the two post-secondary goals linked to that annual goal.

Mother testified Student had a good relationship with Contreras. Contreras' testimony was candid, detailed, and believable. He presented as an extremely conscientious case carrier and special education teacher, who knew Student well. Contreras was knowledgeable about Student's career interests and post-secondary education potential choices and preferences and had good recall of working with her. William Wescott, a Perris District program specialist and expert in transition programs, testified knowledgably about the wide-ranging services and experiences in career and college readiness available to Student through her transition plan.

As part of the individual transition plan, the IEP team developed an annual transition goal appropriate for Student. It did not have a baseline, but there is no legal requirement that a transition goal include a baseline. Moreover, the offered transition plan provided Student with age-appropriate career and college awareness services.

## TESTIMONY OF JUDITH IMPERATORE REGARDING THE INDIVIDUAL TRANSITION PLAN OFFERED WAS NOT PERSUASIVE

Judith Imperatore, a witness hired by Student to provide an opinion regarding the appropriateness of the individual transition plans Perris District offered to Student in each of the February 10, 2022 IEP and the February 27, 2023 IEP, testified at hearing. Imperatore, who has a master's degree in education, characterized herself as a transition specialist. Imperatore, who resides in Connecticut, was educated in Massachusetts, and earned a transition certification in Kansas, claimed to be familiar with California law on

transition because she had worked on some cases in California and had belonged to a “transition association” in California. Imperatore also claimed to have focused on “federal legal requirements for transition” in her graduate degree in education.

Imperatore’s professional experience primarily involved vocational training and employment for disabled adults. Imperatore’s resume indicated she never worked for either a public school district, a nonpublic school, or a private school. Imperatore testified she was hired to give an opinion on whether the individual transition plans offered Student were legally compliant. Imperatore does not have a law degree and is not admitted as an attorney in California or any other state. Imperatore met with Student and Parents twice in videoconferences on December 17, 2023, and December 18, 2023, which was after the hearing in this matter was already in progress. Their first meeting was two hours long. The second meeting was about one and a half hours long. The brevity of Imperatore’s interactions with Student and Imperatore’s extremely limited familiarity with Student undermined the credibility of Imperatore’s opinions regarding the offered individual transition plans and whether they appropriately met Student’s transition needs. Imperatore was hired to offer an expert opinion at hearing before she even met Student and before she reviewed educational records regarding Student. Therefore, the objectivity of Imperatore’s opinions were questionable.

Imperatore’s criticisms of the individual transition plan offered in February 2022 were disjointed and confusing. She seemed to be basing her opinions on her idea of best practices, rather than legally mandated requisites for transition plans. She claimed Student did not know what the digital media industry was. This statement was very hard

to believe because Student had taken a year-long Introduction to Digital Media course in ninth grade, and expressed an interest in a career in digital media, particularly anime, to Contreras.

Imperatore was not familiar with the career and college awareness programs available to Student through her transition plan at Liberty High School. Imperatore had not spoken to Student's case carriers. Imperatore claimed the time allotted for the transition services was inadequate. However, even though the IEP stated 40 minutes a year was attributed to the yearly duration of the services devoted to each area of college awareness and career awareness, the testimony of Contreras and Westcott established the intent of the transition plan was that Student would work regularly on this goal during her study skills class under her teacher's guidance in both the balance of ninth grade and in tenth grade through February 9, 2023.

Transition services may be special education, if provided as specially designed instruction, or related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.) The study skills class was specially designed instruction. If Imperatore had spoken to either Contreras, Westcott, or Sara Salyer, Student's case carrier for the 2022-2023 school year, Imperatore would have understood that the transition services were primarily delivered as part of the study skills curriculum.

Imperatore had no teaching experience and had never worked at a high school in any capacity. Moreover, Imperatore's testimony was extremely confusing and not persuasive. She did not appear to be an unbiased expert on individual transition plans offered at the high school level as required under California law and the IDEA. Her criticisms of the individual transition plan Perris District offered Student were not credible and were given little weight.



## CONCLUSION ON ISSUE 1(b)

Student failed to meet her burden to prove Perris District denied her a FAPE in the 2021-2022 school year by failing to offer an appropriate individual transition plan. Student did not present convincing evidence that the offered transition plan was inadequate. It was based on an assessment of Student's career interests, developed with Student's participation, and aligned with the annual career interest goal. Student also failed to prove that the offered transition plan was substantively noncompliant with the law, or inappropriate for Student. The plan addressed Student's career interest needs in the digital media industry. The plan was tailored to support Student while she learned, under her study skills' teacher's direction and guidance, about the skills, knowledge, and credentials required to pursue a career in Student's area of interest. The individual transition plan offered Student sufficient time and services to work on her post-secondary goals under teacher supervision.

Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2021-2022 school year by failing to offer her an appropriate individual transition plan. Therefore, Perris District is the prevailing party on issue 1(b).

## ISSUE 1(c): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR IN THE IEP DATED FEBRUARY 10, 2022, BY FAILING TO OFFER APPROPRIATE GOALS IN MATH, WRITING, AND TRANSITION?

Student contends Perris District denied her a FAPE by failing to offer her appropriate goals in math, writing, and transition because the goals were not tailored to Student's needs. Student further contends the math goal was too general, and the transition goal failed because it lacked a baseline.

Perris District contends it offered Student appropriate goals in math, writing, and transition. Perris District further contends all three annual goals offered in the February 10, 2022 IEP were appropriately tailored to address Student's needs. Perris District further contends the offered goals were specific and objectively measurable.

Federal and State law specify in detail what an IEP must contain. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320 (2006); Ed. Code, § 56345.) An annual IEP must contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1) (2006); Ed. Code, § 56345, subd. (a)(1).) The statement of a student's present levels of performance creates a baseline for designing educational programming and measuring a student's future progress toward annual goals.

An annual IEP must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the student to be involved in and make progress in the general curriculum; and (2) meet each of the student's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services (OSERS), March 25, 1988).

In addition, the annual goals in an IEP must include appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved, and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (a)(3); 20 U.S.C. § 1414(d)(1)(A)(i)(III).) An examination of an IEP's annual goals is central to the determination of whether a student has received a FAPE. A court must look to the IEP goals and goal achieving methods at the time the plan was implemented and determine whether those methods were reasonably calculated to confer a meaningful benefit. (*Adams, supra*, 195 F.3d at p. 1149.)

A student may derive educational benefit under *Rowley* if some of her goals and objectives are not fully met, or if they make no progress toward some of them, as long as they make progress toward others. A student's failure to either meet all her goals, perform at grade level, or achieve passing grades in classes is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with her abilities. *Perusse v. Poway Unified School Dist.* (S.D.Cal. July 12, 2010, No. 09 CV 1627) 2010 WL 2735759, at p. 11.)

Benchmarks or short-term objectives for annual goals are required in IEPs only for children with disabilities who take alternate assessments aligned to alternate academic achievement standards. (34 C.F.R. § 300.320(a)(2) & (B)(ii); Ed. Code, § 56345, subd. (a)(1) (C). In the present case, Student did not take alternate assessments aligned to alternate achievement standards. All the classes Student took during both the 2021-2022 and 2022-2023 school years, except for study skills, used the general education curriculum. Furthermore, Student took regular, not alternate, district and statewide assessments.

The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (2)(A).) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.) The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County School Dist. Two* (D.S.C. 2011, No. 7:10-cv-01873-JMC) WL 3882850, at p. 6. [the use of percentages tied to the completion of discrete tasks was an appropriate way to measure student progress].) A failure to offer an appropriate goal is a procedural violation of the IDEA.

The IDEA does not establish a specific number of goals that must be included in an IEP, as that would contradict the premise that every IEP should be individualized. However, there should be at least one annual goal for each area of a child's needs. "[A]n IEP is not required to contain every goal from which a student might benefit." (*Capistrano Unified Sch. Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133, cert. denied sub nom. *S.B. v. Capistrano Unified Sch. Dist.* (2022) 143 S.Ct. 98, citing *R.F. v. Cecil Cnty. Pub. Schs.* (4th Cir. 2019) 919 F.3d 237, 251.)

## ANNUAL GOALS OFFERED IN MATH, WRITING, AND TRANSITION IN THE FEBRUARY 10, 2022 IEP WERE APPROPRIATE

Perris District offered Student three annual goals in the IEP dated February 10, 2022:

1. Algebraic Thinking: By February 9, 2023, given supports, Student will write expressions in equivalent forms to solve problems [with] at least 80 percent accuracy in 3 of 4 trials as measured by curriculum-based assessments or teacher records. Student's baseline was: Student is able to solve equations with variables on both sides with 54 percent accuracy.
2. Supporting Details: By February 9, 2023, Student will write a three-paragraph essay with supporting details and cite textual evidence to support her claims with 90 percent accuracy, in two of three nonconsecutive trials measure[d] by student work samples. Student's baseline was: Student is able to write a five-sentence paragraph with topic sentence and conclusion.
3. Career Interest: By February 9, 2023, Student will be able to understand the qualifications, duties, education, outlook, [and] salary of three careers in the digital media industry with 90 percent accuracy in two of three nonconsecutive trials. This goal was measured by teacher observation and/or Student work samples. No Student baseline was provided.

Mother testified that draft IEP goals were sent to her before the February 10, 2022 IEP team meeting. Mother further remembered that the appropriateness of those proposed goals for Student were discussed at February 10, 2022 IEP team meeting. Mother did not remember much else about the team's process of developing and finalizing Student's annual goals at the February 10, 2022 IEP team meeting.

## ALGEBRAIC THINKING GOAL

Student's annual goal in algebraic thinking was based on Student's ability as demonstrated in her Algebra 1 class and was measurable and appropriate. The IEP team invited input from all team members, including Parent and Student, on all the draft goals provided to them before the meeting. After discussion, and consideration of Parents' concerns, the team decided this proposed goal was appropriate. The team also determined the goal met Student's needs at the time, and that she could reasonably reach it within one year. The plain language of the goal establishes Student's progress on it could be objectively measured by tests based on the math curriculum or teacher reports in three out of four trials with 80 percent accuracy. The team recognized Student would need extra time to complete assignments and tests to reach this goal. The team also recognized Student would require access to the Learning Center, a room staffed with a special education teacher where students with IEPs could go for extra help and to take tests with accommodations, to reach this goal. Perris District offered Student those needed accommodations.

Student received an A- in her Algebra 1 class at the end of the second semester in the 2021-2022 school year. Student had significant difficulty with her Geometry class the following school year, but passed it with a D+ at the end of the first semester of the

2022-2023 school year. By February 9, 2023, Student partially met this goal. Therefore, it was evident Student made progress in mathematics, one of her areas of need, by February 9, 2023. The evidence established the math goal was appropriate for Student.

## WRITING WITH SUPPORTING DETAILS GOAL

Student's annual writing goal required her to write a three-paragraph essay using supporting details and citing textual evidence and was measurable and appropriate. Mother testified this was a great goal for Student. This goal was developed based on input from Student's English teacher. Student had already mastered five-sentence paragraphs. The next logical step in writing for Student was to learn to write a more complex three-paragraph essay with specific supporting and cited evidence. Student's progress on this goal could be objectively measured by her teacher's review of Student's written work samples on two out of three trials with 90 percent accuracy. After addressing Parents' concerns, and discussion on the proposed goal, the IEP team decided Student could achieve this goal within a year and that it was appropriately ambitious for Student in light of her circumstances.

At the end of the second semester of the 2021-2022 school year, Student earned a C in her English I class. At the end of the first semester of the 2022-2023 school year, Student had earned a C- in her English II class. By February 9, 2023, Student partially met this goal. Therefore, Student had made progress in writing, one of her areas of need, by February 9, 2023. The evidence established the writing goal was appropriate for Student.

## CAREER INTEREST GOAL

Student's annual goal in career interest was measurable and appropriate. It required Student to understand the qualifications, duties, education, market outlook, and salaries of careers in the digital media industry. Student was taking an Introduction to Digital Media class during the 2021-2022 school year, and had expressed her interest in pursuing a career in that industry. Because Student's career interests would drive her transition goal, the team based this goal on the results of the transition assessment Contreras conducted, and Student's expressed interest in an anime career. Due to Student's academic challenges, the team wanted to provide extra support in this area by creating an annual goal with services to address this area of need. Short term objectives were not legally required since Student took regular district and statewide assessments. After discussion, the team members determined Student could reasonably achieve this goal within 12 months. The goal is clear on its face as to how Student's progress could be objectively measured by a teacher's review of Student's work samples on two out of three trials with 90 percent accuracy.

At the end of the second semester of the 2021-2022 school year, Student earned an A+ in her Introduction to Digital Media class. By February 9, 2023, Student partially met this goal. Therefore, it was evident Student made progress in researching career interests, one of Student's areas of need, by February 9, 2023. The evidence established the career interest goal was appropriate for Student.

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## SHIN'S TESTIMONY ON THE MATH AND WRITING GOALS OFFERED IN THE FEBRUARY 10, 2022 IEP WAS NOT CREDIBLE

When Student's attorney asked Shin at hearing her opinion on the algebraic thinking goal, Shin first responded by saying the goal was very general and "Student needs objectives ... benchmarks." Then, Student's attorney asked Shin if the algebraic thinking goal met Student's math needs, and Shin responded, "I don't know enough about what her math needs are." Student's attorney then asked Shin if the algebraic thinking goal was linked to services? Shin responded, "Student needs more accommodations, maybe pull-out or one-to-one aide, or extra tutoring." Shin did not testify as to which specific accommodations should have been included in the IEP for Student to meet the algebraic thinking goal.

Shin's testimony about the algebraic thinking goal was unconvincing for multiple reasons. First, the goal is not "very general" as Shin opined. The plain language of the goal is specific. It is specific enough that a high school math teacher who did not write the goal could implement it. Therefore, the goal does not fail because it is too general.

Second, the law does not require annual IEP goals to include short term objectives or benchmarks. The IDEA requires districts to develop short-term objectives or benchmarks only for those children with disabilities who take alternate assessments aligned to alternate achievement standards. 34 CFR §300.320 (a)(2)(B)(ii); Ed. Code § 56345, (a)(1)(C). Student did not take alternate assessments when she was enrolled in the Perris District. Throughout the time Student was enrolled at the Perris District Student was always on track to earn a high school diploma. Student was taking mostly all general education classes.

Mother testified incorrectly that Student was at first on a non-diploma track during her first year at Liberty High School, but that changed in Student's 10th grade year. Student was always on track to earn a high school diploma at Liberty High School. Throughout Mother's testimony, she seemed confused about many facts regarding the IEP process and Student's school work during the relevant time frames. For example, Mother did not understand the difference between a certificate of completion for high school, and a high school diploma. As a result, Mother's testimony was often not reliable and, therefore, lacked credibility.

Lastly, Shin admitted under oath she could not opine whether the algebraic thinking goal met Student's math needs because Shin did not know enough about Student's math needs to render that opinion. Shin met with Student only once in a virtual meeting for less than an hour with at least one Parent present. Shin was clearly not familiar with Student's needs in academic areas enough to give a credible opinion on whether the offered academic goals met Student's needs. Moreover, Shin had no training or experience teaching high school mathematics or high school English. According to her testimony and resume, Shin's professional focus appeared to be early childhood education. For these reasons and those discussed in Issue 1(a), Shin's opinions in general were not credible. Specific to this issue, Shin's opinions regarding the algebraic math goal offered in the February 10, 2022 IEP were not based on sufficient expertise and information about Student and her needs, and were given little weight.

When Student's attorney asked Shin if the supporting details in writing goal was tailored to meet Student's needs, Shin responded "It is a good goal for Student, but Student needs benchmarks." Shin then stated Student needed more accommodations. Shin also stated Student needed more guidance on how to get started writing, and that

Student might need an organization chart, or a one-to-one aide, or a pull-out service. These were criticisms only of the services and accommodations which Shin thought should have been offered, not of the writing goal itself. Shin also inaccurately testified Student never used the Learning Center. The evidence established Student took her tests and quizzes in the Learning Center and went to the Learning Center to work on assignments.

Shin's testimony about the writing goal was vague and inconsistent with her earlier testimony. For example, Shin's testimony that Student possibly needed a one-to-one aide to achieve this goal was inconsistent with Shin's testimony that Student probably did not need a one-to-one aide because an aide could cause Student to have social-emotional problems due to social stigma associated with an aide for a high school student. Further, as discussed, Shin's criticism that Student needed benchmarks is not persuasive because the law does not require benchmarks for Student. Shin's vague and overbroad statements that Student may need more help when she starts writing did not undermine the appropriateness of the writing goal.

#### IMPERATORE'S TESTIMONY ON THE CAREER INTEREST GOAL OFFERED IN THE FEBRUARY 10, 2022 IEP WAS UNPERSUASIVE

When asked if the career interest goal met Student's educational needs, Imperatore answered, "Yes." However, Imperatore also opined the goal was inappropriate because there was no transition assessment and no baseline. Imperatore also criticized the goal because she said Student did not know what the digital media industry was.

Imperatore further opined the career interest goal “may not be accurate” because there are five developmental career stages, and in 2022, Student was at the first stage of career development, and the goal was not at the first stage of career development.

According to Imperatore, the five career development stages are:

1. awareness;
2. explanation;
3. decision making and implementation;
4. maintenance; and
5. retirement.

Imperatore gave no basis for her opinion why the goal was not at the “career awareness” stage. Imperatore’s opinion did not make sense because the plain language of the goal established it was intended to meet the needs of a student at the beginning stages of the career exploration process.

Imperatore’s opinion that the career interest goal was inadequate because there was no transition assessment of Student and the goal did not include a baseline, was incorrect. Contreras conducted a transition assessment of Student through a 60-question survey and an interview. Moreover, no baseline was needed because the law did not require it. Also, there could be no baseline on this skill because Student had not previously conducted research on careers. Therefore, Imperatore’s opinions of this goal were not persuasive and were given little weight.

## CONCLUSION ON ISSUE 1(c)

Student failed to introduce any convincing evidence that any one of the three annual goals in algebraic thinking, supporting details in writing, and career interest

offered in the February 10, 2022 IEP were inappropriate. All three annual goals offered were tailored to meet Student's specific areas of need in academics and transition. All three offered goals could reasonably be achieved by Student within one year. All three goals were appropriately ambitious for Student in light of her circumstances. Lastly, all three offered annual goals were objectively measurable.

Consequently, Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2021-2022 school year by failing to offer her appropriate goals in math, writing, and transition. Therefore, Perris District prevailed on Issue 1(c).

**ISSUE 1(d): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR IN THE IEP DATED FEBRUARY 10, 2022, BY FAILING TO OFFER AN EXTENDED SCHOOL YEAR PROGRAM FOR SUMMER 2022?**

Student contends Perris District denied her a FAPE by failing to offer her an extended school year program for summer 2022 because Student was likely to regress academically over the summer break from school.

Perris District contends Student was not likely to regress academically over the summer break from school. Perris District further contends extended school year was not appropriate for Student because data indicated she did not have any problems recouping academically after an extended break from school over the summer.

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The law requires an IEP to state whether extended school year services are offered. (Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides:

Extended school year services shall be provided, in accordance with 34 C.F.R. section 300.106, for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition.

Shin testified she did not know anything about extended school year programs. Mother testified Student was not offered an extended school year program at the February 10, 2022 IEP team meeting, but the IEP team discussed whether or not Student should take a class over the summer 2022 in regular general education summer school. Mother stated she did not know the difference between an extended school year program and the regular general education summer school classes offered. However, there was no evidence Mother expressed that confusion or asked for clarification regarding the difference between an extended school year program and general education summer school at any IEP team meetings, or in any communication with any district staff member.

Student failed to introduce any persuasive evidence that Student materially regressed academically over extended breaks from school. Student also failed to introduce any convincing evidence that Student could not recoup any minor academic regression she experienced once school started again after summer break.

#### CONCLUSION ON ISSUE 1(d)

Student failed to introduce any convincing evidence that she regressed over summer or other extended breaks, or could not reasonably recoup academically once school reconvened. Consequently, Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2021-2022 school year by failing to offer her an extended school year program for summer 2023. Therefore, Perris District prevailed on Issue 1(d).

#### ISSUE 1(e): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2021-2022 SCHOOL YEAR IN THE IEP DATED FEBRUARY 10, 2022, BY PREDETERMINING THE OFFER OF A FAPE BY FAILING TO CONSIDER PARENTS' REQUEST FOR TUTORING SERVICES?

Student contends Perris District denied her a FAPE by predetermining its offer of a FAPE in the February 10, 2022 IEP when it failed to consider Parents' request for tutoring services.

Perris District contends it did not predetermine the offer of a FAPE in the February 10, 2022 IEP. Perris District further contends it appropriately considered and responded to Parents' request for tutoring services.

## PARENTS MUST BE AFFORDED THE OPPORTUNITY TO PARTICIPATE IN THE DECISION-MAKING PROCESS

Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(III); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP team meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-5; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

The IEP team must consider the concerns of the parent for enhancing the student's education and information on the student's needs provided by the parent. (20 U.S.C. § 1414(d)(3)(A)(ii) and (d)(4)(A)(ii)(III); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) The U.S. Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167



L.Ed.2d 904].) The informed involvement of parents is central to the IEP process. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development, but they also provide information about the child critical to developing a comprehensive IEP, which only they are in a position to know. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

A school district is required to conduct not just an IEP team meeting, but also a meaningful IEP team meeting. Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every step as it did upon the measurement of the resulting IEP. (*Target Range* (9th Cir. 1992) 960 F.2d at 1485, citing *Rowley, supra*, 458 U.S. at 205-206.) Participation must be more than mere form; it must be meaningful. (*Deal v. Hamilton County Board of Education* (6th Cir. 2004) 392 F.3d 840, at p. 858 [internal citations omitted].) A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Ibid.*) A school district that predetermines the child's program and does not consider the parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (*Ibid.*, 392 F.3d at p. 858.)

For IEP team meetings, predetermination occurs when an educational agency has decided on its offer prior to the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton, supra*, 392 F.3d 840, 857-858.) Although an educational agency is not required to accede to parents' desired placement, it must maintain an open mind about placement decisions and be willing to consider a placement proposed by the parents, as well as its own proposed placement. (*H.B. v. Las Virgenes Unified School Dist.* (9th Cir.

2007), No. 05-56486) (9th Cir. 2007) 239 Fed. Appx. 342, 345 [nonpub. opn.].) An educational agency must make it clear to parents at the outset of an IEP meeting that the proposals offered by a school district are only recommendations for review and discussion with the parents.

A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE. Substantive harm occurs when parents are denied meaningful participation in a student's IEP development. (*Deal v. Hamilton, supra*, 392 F.3d 840, 857-858.). Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B., et al. v. Las Virgenes, supra*, 239 Fed. Appx. 342, 344 [nonpub. opn.]. The law is clear a district may not present a proposal at an IEP team meeting with a take it or leave it offer, which constitutes error. (*JG v. Douglas County School Dist.*, (9th Cir. 2008), 552 F.3d 786, 801, fn. 10.)

## PERRIS DISTRICT APPROPRIATELY RESPONDED TO PARENT'S REQUEST FOR TUTORING, AND DID NOT PREDETERMINE THE OFFER OF A FAPE IN THE FEBRUARY 10, 2022 IEP

Mother asked at the February 10, 2022 IEP team meeting if tutoring services were available for Student. As discussed in Issue 1(a), the team responded at the meeting by informing Student and Parents about an online tutoring service called Paper that was available to all Perris District's students. Thus, the IEP team properly responded to Mother's request for tutoring at the IEP team meeting.

According to Mother, despite the team informing Parents and Student about the available tutoring service, Student never accessed it because she lost her password. There was no evidence Student or anyone else sought help from Perris District staff to obtain a new password or assistance to access the Paper tutoring program. There was also no evidence Student required tutoring services in the form of more specialized academic instruction than was offered in the February 10, 2022 IEP.

On August 11, 2022, Mother wrote to Salyer, who was then Student's case carrier, asking for help in getting a tutor for Student. Salyer promptly responded to Mother's request the following day by providing her with information about the Paper tutoring program and an electronic link to it. There was no evidence that either Parents or Student made any further inquiries about tutoring services. Additionally, Mother testified Student often went for individual in-person tutoring from her geometry teacher before school. Mother said Student preferred to have tutoring in the morning. Student also received in-person academic assistance in the Learning Center.

The evidence demonstrated the IEP team appropriately responded to Mother's request for tutoring at the February 10, 2022 IEP team meeting. Moreover, the evidence also established Parents meaningfully participated in the February 10, 2022 IEP team meeting. There was no persuasive evidence that Perris District significantly impeded Parents' opportunity to participate in the IEP process at the February 10, 2022 IEP team meeting.

Student had access to online tutoring but elected not to use it and did not ask for help to access it. Neither Student, nor Parents, told anyone at school Student was having trouble accessing the online tutoring program. Moreover, neither Student, nor

Parents, informed the school Student needed in-person tutoring instead of online tutoring, preferably before school. Perris District cannot be held to account for not responding to information that it was not given.

Predetermination of a FAPE occurs when some or all of the IEP team make a decision about FAPE for a child outside of the IEP team meeting, or when the IEP team makes a "take it or leave it" offer of a FAPE to a child over protests from the parents. Student failed to introduce any evidence that Perris District significantly impeded upon Parents' opportunity to participate in the IEP process. None of Parents' or Student's raised requests or concerns were ignored during the IEP process. Perris District did not make a "take it or leave it" offer of a FAPE, and promptly responded to Parent's request for tutoring by directing her to a tutoring resource available to Student.

#### CONCLUSION ON ISSUE 1(e)

Student failed to introduce any convincing evidence that Perris District significantly impeded upon Parents' opportunity to participate in the IEP process. Student also failed to introduce evidence that the offer of a FAPE in the February 10, 2022 was predetermined by any team members. Consequently, Student failed to meet her burden of proof on issue 1(e). Therefore, Perris District prevailed on Issue 1(e).

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ISSUE 2(a): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR IN THE IEP DATED FEBRUARY 27, 2023, BY FAILING TO OFFER A ONE-TO-ONE AIDE?

Student contends Perris District denied her a FAPE by failing to offer her a one-to-one aide to assist with academic instruction. Student contends she required a full-time, one-to-one aide to explain academic concepts in order to access her education.

Perris District contends it would have been inappropriate, and possibly even harmful to Student, to provide her with a one-to-one aide since Student advocated for herself well and had no problem paying attention in class. Perris District further contends Student did not have behavioral or attention issues which required the support of a one-to-one aide in any setting. Perris District further contends Student accessed her education with the specialized academic instruction, supports and accommodations offered Student in the IEP dated February 27, 2023. Perris District further contends Student's passing grades in general education classes established she accessed her education during the relevant time period.

IEP DATED FEBRUARY 27, 2023

On February 27, 2023, when Student was in tenth grade and 16 years old, her IEP team met to review Student's annual IEP and to develop an offer of a FAPE for the upcoming year through February 26, 2024. Student, Parents and Student's older sister attended that meeting, along with general education teacher, Jedidiah Butler; special education teacher and case carrier, Salyer; administrator, Chanly Henderson; and

counselor, Yer Xiong Hartey. The team discussed supplementary aids and accommodations and reached an agreement regarding which aids and accommodations Student needed. The team agreed Student's behavior did not require a behavior support plan.

The team discussed Student's struggles with her geometry class. Mother and Sister inquired about whether Student should be in an easier level geometry class. After discussion, the team decided Student should remain in her geometry class.

A full continuum of placement options were considered for Student. The team determined Student continued to be eligible for special education under the category of other health impairment and would continue to benefit from having a special education study skills class. The team recognized Student required support in

- writing,
- math,
- college awareness,
- career awareness, and
- independent living.

Parents reported they would like Student to have a study skills class, and expressed concern that Student was not retaining concepts learned in her math class. Student's teachers reported Student follows directions, that she is motivated at school, has a positive attitude, and works well in groups. Parents reported Student was a hard worker, despite the fact that some academics did not come easily to her. Parents also mentioned Student had difficulty solving multiple problems at one time.

Parents noted Student needed extended time to complete her schoolwork, and additional attention from her teachers. Parents also expressed concern about the manageability of Student's workload. Parents wanted Student's study skills class to occur at the end of her school day so she could get help on her homework. Parents did not specifically request tutoring for Student at the February 27, 2023 IEP team meeting.

The team reviewed Student's goals from her February 10, 2022 IEP. Student partially met each of her goals in math, writing, and career interest. The team recognized Student continued to have areas of need in writing, math, and transition, and revised Student's goals taking into consideration Student's current grade level and present levels of performance. The team noted Student could communicate effectively with peers and adults. The team further noted Student's gross and fine motor development were age appropriate. Student's teachers rated her classroom behavior, peer relations, and response to staff direction and teacher intervention as being in the excellent to good range, depending on the class. Student's teachers rated her classwork and independent work completion as being in the range of good to poor, depending on the class.

Regarding Student's adaptive and daily living skills, Student reported to the team that she does her own laundry, cooks for herself and others, cleans up after herself, and independently dresses and grooms herself. The team recognized Student helps with daily chores around her family's house. The team recognized that Student continued to need support in the areas of writing, math, and transition after high school. Student informed the team she was unsure about which college she wanted to attend. She told the team she would like to eventually have a job that was either artistic or provided a

community service. Student further stated she wanted to learn how to create a resume. Student also wanted to practice interviewing for a job, get a driver's license, and learn how to make a budget.

The team did not complete the IEP on February 27, 2023. The team met again on March 6, 2023. The IEP developed over two separate days will be called the February 27, 2023 IEP. When the March 6, 2023 IEP team meeting was completed, the IEP team made the following offer of a FAPE to Student:

- access to the Learning Center to work on assignments and/or take assessments, including final exams;
- access to preferential seating;
- extended time to complete assignments, and take tests and quizzes;
- permission to use a calculator for math tests, quizzes, and assignments;
- permission to use Student's notes on tests and quizzes;
- 250 minutes weekly of group specialized academic instruction, which consisted of a study skills class taught by a credentialed special education teacher;
- 20 minutes a month of consultation service between Student's general education teachers and Student's special education teacher/case carrier or manager;
- 30 minutes yearly of college guidance in a regular classroom;
- 30 minutes yearly of career guidance in a regular classroom;
- 30 minutes yearly of transition service addressing independent living guidance in a special education classroom;



- no extended school year program since Student did not demonstrate significant academic regression, and/or limited recoupment of skills during extended school breaks;
- accommodations allowed when Student takes state and district wide assessments, including extra time;
- Student's offered program described above was outside of the regular classroom for 12 percent of the school day, and in the regular classroom for 88 percent of the school day, at Student's school of residence, Liberty High School;
- Student was on track to earn a high school diploma by June 5, 2025;
- Student's anticipated courses through graduation were identified by the team.

Parents agreed to the March 6, 2023 offer of a FAPE in the February 27, 2023 IEP. The team agreed to meet again near the end of the 2022-2023 school year to determine which level math class Student should take during 11th grade.

### IEP AMENDMENT ON MAY 25, 2023

Student's IEP team met again on May 25, 2023, to discuss which math class Student should take during the 2023-2024 school year. Liberty High School requires all students pass three years of math courses in order to earn a high school diploma. Student passed Geometry with a D. After discussion, the team determined Student should take a special education math class identified on Student's high school transcript

as “Advanced Algebra with Financial Application Essentials,” called Math Essentials. This math class was considered specialized academic instruction, and was taught by a special education teacher.

Once this amendment to the February 27, 2023 IEP was in effect, Student would be in the regular classroom setting for 76 percent of her school day, and out of the regular classroom setting for 24 percent of the day. As of the date of hearing, Student was doing well in the Math Essentials class, which was taught Salyer. The evidence suggested the academic pressure Student felt in tenth grade was the result of challenges she had with her Geometry class during the 2022-2023 school year.

#### NO EVIDENCE STUDENT REQUIRED A ONE-TO-ONE AIDE DURING THE 2022-2023 SCHOOL YEAR

For the reasons discussed in Issue 1(a), Student did not need a one-to-one aide on February 27, 2023, or March 6, 2023, when the relevant IEP was developed. None of the witnesses who testified at hearing thought Student required a one-to-one aide. All of Student’s teachers at hearing opined Student had excellent behavior, social-emotional, and communication skills, and did well academically with the supports in her IEP. Several witnesses opined Student would benefit, just as any person could benefit, with one-to-one attention from an adult staff member throughout the day. But, as discussed, school districts are not required to provide Student services to maximize educational benefit. A few witnesses, including Shin, testified a one-to-one aide could be harmful to Student’s social-emotional well-being because there might be a social stigma attached to having a one-to-one aide in high school.

## CONCLUSION ON ISSUE 2(a)

Student's situation did not change materially from February 10, 2022, to February 27, 2023, except she was having difficulty with mastering content in her Geometry class in 2023. That difficulty would not reasonably be addressed by giving Student one-to-one aide services. Student's behavior was excellent. She did not need an aide to prompt her to pay attention.

Student failed to prove Perris District denied her a FAPE in the 2022-2023 school year in the February 27, 2023 IEP by failing to offer Student a one-to-one aide. The evidence established Student did not require a one-to-one aide to access her curriculum and make reasonable progress in light of her circumstances on February 27, 2023, and on March 6, 2023. Therefore, Perris District prevailed on Issue 2(a).

## ISSUE 2(b): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR IN THE IEP DATED FEBRUARY 27, 2023, BY FAILING TO OFFER AN APPROPRIATE INDIVIDUAL TRANSITION PLAN?

Student contends Perris District denied her a FAPE by failing to offer her an appropriate individual transition plan because no formal transition assessment was given to Student in February 2023. Student further contends the post-secondary goal added to the transition plan in independent living was not appropriate for Student.

Perris District contends it offered Student an appropriate, thoughtfully developed individual transition plan. Perris District further contends Student's case carrier, Salyer, conducted a transition assessment before the plan was developed and offered in February 2023.

## THE INDIVIDUAL TRANSITION PLAN DEVELOPED AT THE FEBRUARY 27, 2023 IEP TEAM MEETING

The transition plan developed at the February 27, 2023 IEP team meeting was similar to the plan offered in the February 10, 2022 IEP. However, the team modified the post-secondary goal in education to state that after graduation Student will have determined a course of study or licensing program pertaining to an area of Student's career interest. This post-secondary goal supported Student's annual college awareness goal, which measured Student's research in two careers of interest in the art or culinary field. This goal reflected Student's change in career interest by February 2023.

The team also added a post-secondary goal in the area of employment, which stated that after graduation Student will have completed a realistic resume for employment. This post-secondary goal supported Student's annual goal in career awareness which measured Student's progress on learning to create a resume using the CA Career Zone website. Student did not present any persuasive evidence challenging the appropriateness of either of those new post-secondary goals offered in the February 10, 2023 IEP.

The 2023 individual transition plan also added an independent living goal. That goal required Student to get prepared to take the driver's license permit test and was measured by her success on the state practice tests for that exam. Imperatore opined this goal was inappropriate because Student was afraid to drive due to her grandmother's automobile accident. However, because Student told Salyer during the transition assessment process that she would like to obtain her driver's license permit, this post-secondary goal was added to the transition plan. There was no evidence anyone at Perris District was ever informed about the grandmother's accident or

Student's fear of driving. Therefore, this additional criticism by Imperatore of the transition plan offered in the February 27, 2023 IEP was not persuasive. Also, the plan was developed based on a transition assessment of Student conducted by Salyer which consisted of an interview and an extensive questionnaire regarding careers and Student's preferences. Student failed to present any evidence establishing that this transition assessment was inadequate.

### CONCLUSION ON ISSUE 2(b)

Student failed to meet her burden to prove Perris District denied her a FAPE in the 2022-2023 school year by failing to offer an appropriate individual transition plan. Student did not present convincing evidence that the offered transition plan was either procedurally or substantively noncompliant with the law. For the reasons stated above, Student failed to meet her burden of proof in issue 2(b). Therefore, Perris District is the prevailing party on issue 2(b).

### ISSUE 2(c): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR IN THE FEBRUARY 27, 2023 IEP BY FAILING TO OFFER COUNSELING SERVICES?

Student contends Perris District denied her a FAPE by failing to offer her counseling services in the February 27, 2023 IEP, because Student was anxious or depressed over challenges she experienced with the content of her Geometry class and the volume of homework. Student further contends she should have been offered counseling services because she was depressed over the severe injuries her grandmother had suffered in an automobile accident.

Perris District contends it did not deny Student a FAPE by failing to offer Student counseling services in the February 27, 2023 IEP because neither the IEP team members, nor any other Perris District personnel, were informed Student was suffering from either anxiety or depression before or during the 2022-2023 school year.

## PERRIS DISTRICT WAS NOT INFORMED ABOUT STUDENT'S ANXIETY

Mother testified Student's maternal grandmother was in a very serious automobile accident that left grandmother permanently incapacitate sometime in May 2022. This incident had a traumatic effect on everyone in the family, including Student, who was depressed and anxious over that tragedy. However, there was no evidence Student or Parents informed the IEP team or anyone who worked for Perris District about the accident or Student's resulting depression or anxiety, before or during the development of Student's February 27, 2023 IEP, or at any other time. Parent testified Student was also stressed about her Geometry class, which was difficult for Student. If Student suffered depression or anxiety as a result of her grandmother's accident, or due to the challenges of her geometry class, Perris District cannot be held responsible for failing to provide social emotional supports to Student if neither Student, nor Parents, informed the Perris District about these situations and Student's resulting mental health difficulties.

There was no evidence Student had ever previously needed, been assessed for, or was offered counseling, or any type of mental health or behavior service. Student seemed well adjusted and happy to school personnel. There was no evidence Student, Parents, or any of Student's teachers, thought Student might need counseling services during 2022-2023 school year. That concern was never raised at an IEP team meeting.

When Mother was asked at hearing how Student expressed her anxiety or depression, Mother responded that Student internalizes her feelings and does not express her feelings. Mother testified Student “keeps her anxiety inside” and Student “has cried only a few times.” Therefore, it is unlikely Student’s anxiety and depression were outwardly expressed at school. Mother thought she had spoken to someone about Student’s anxiety, but she could not remember who it was. Mother’s testimony on this subject, which was vague and speculative, was unconvincing and uncorroborated by any written evidence, such as a letter or email.

There was no documentary evidence the IEP team or anyone at Perris District was informed by Parents or Student that Student was suffering from anxiety or depression, either before or during the 2022-2023 school year. Student’s teachers perceived Student as a happy, well-behaved student who advocated for herself effectively. Student’s teachers were consulted before the February 27, 2023 IEP team meeting. They consistently reported Student’s relations with adults and peers were in the “range of excellent to good.” The February 27, 2023 IEP also noted that no concerns regarding Student’s communication were reported.

Father sent an email to Salyer on January 31, 2023, regarding Student falling behind on her Geometry assignments. That email did not mention anything about Student suffering from anxiety or depression. Salyer consulted Student’s Geometry and study skills teachers about addressing the concern Father had raised. The group decided to discuss Father’s concern at the upcoming February 27, 2023 IEP meeting. However, neither Parents, nor Student, disclosed to the IEP team that Student was feeling depressed or anxious and might need counseling services to address her feelings related to her Geometry class or anything else.

## PERRIS DISTRICT IS NOT RESPONSIBLE FOR INFORMATION IT DID NOT KNOW

The law is clear that an IEP team is held to be responsible only for the information about a child it was aware of at the time it offered an IEP. The appropriateness of an IEP is judged on what was, and was not, objectively reasonable to the IEP team based on the information it had about the child at the time the IEP was drafted and implemented. (Adams, *supra*, 195 F.3d at 1149.) In this case, there was no evidence that student, Parents, or anyone else, informed any member of the IEP team or any Perris District personnel that Student was suffering from anxiety or depression, or might need counseling services, either before or during the 2022-2023 school year. There was no objective reason for anyone at the Perris District to suspect Student needed counseling, when she had never needed it before. Perris District cannot be held responsible for failing to offer counseling to Student if it was not aware Student had developed new social-emotional needs. Therefore, Perris District did not deny Student a FAPE in the 2022-2023 school year by failing to offer Student counseling services in the IEP dated February 27, 2023.

### CONCLUSION ON ISSUE 2(c)

Student failed to prove Perris District denied Student a FAPE in the 2022-2023 school year in the February 27, 2023 IEP by failing to offer Student counseling. Perris District was provided no information that Student was anxious or depressed in February or March 2023. Consequently, Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2022-2023 school year by failing



to offer her counseling services in the February 27, 2023 IEP. Therefore, Perris District prevailed on Issue 2(c).

**ISSUE 2(d): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR IN THE IEP DATED FEBRUARY 27, 2023 BY FAILING TO OFFER AN EXTENDED SCHOOL YEAR PROGRAM FOR SUMMER 2023?**

Student contends Perris District denied her a FAPE by failing to offer her an extended school year program for summer 2023 because Student was likely to regress academically over the summer break from school.

Perris District contends it would not have been appropriate to offer Student an extended school year program for summer 2023 because Student was not likely to regress academically over the summer break from school. Perris District further contends extended school year was not appropriate for Student because data indicated she did not have any problems recouping academically after an extended break from school over the summer.

Historically, Student had never had a problem with regression over a summer break from school, as discussed in Issue 1(d). Student failed to introduce any convincing evidence that Student suffered academic regression during the 2022-2023 school year. Student also introduced no evidence that she could not reasonably recoup academically once school reconvened after summer breaks. Therefore, there was no evidence Student should have been offered an extended school year program for summer 2023.

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## CONCLUSION ON 2(d)

Consequently, Student failed to prove by a preponderance of the evidence that Perris District denied her a FAPE in the 2022-2023 school year by failing to offer her an extended school year program for summer 2023. Therefore, Perris District prevailed on Issue 2(d).

## ISSUE 2(e): DID PERRIS DISTRICT DENY STUDENT A FAPE IN THE 2022-2023 SCHOOL YEAR IN THE IEP DATED FEBRUARY 27, 2023, BY PREDETERMINING THE OFFER OF A FAPE BY FAILING TO CONSIDER PARENTS' REQUEST FOR TUTORING SERVICES?

Student contends Perris District denied her a FAPE by significantly impeding upon Parents' opportunity to participate in the decision-making process regarding provision of a FAPE to Student by failing to consider Parents' request for tutoring services at the February 27, 2023 and March 6, 2023 IEP team meetings.

Perris District contends it did not deny Student a FAPE because it considered all of Parents' concerns at the February 27, 2023 and March 6, 2023 IEP team meetings.

## PARENTS DID NOT REQUEST TUTORING AT THE IEP MEETINGS HELD ON FEBRUARY 27, 2023, AND MARCH 6, 2023

Student did not introduce evidence that Parents requested tutoring at the February 27, 2023, or March 6, 2023 IEP team meetings. In fact, Mother testified Student had gone on multiple occasions for in-person tutoring in Geometry with her math teacher before school during the 2022-2023 school year. There was also no

evidence any other concerns raised by Parents at either the February 27, 2023 IEP team meeting, or the March IEP team meeting, were not discussed and considered by the IEP team. There was also no evidence that Perris District significantly impeded Parents' opportunity to participate in the IEP team meetings. In fact, the evidence was clear that Parents meaningfully participated in the February 27, 2023, and March 6, 2023 IEP team meetings. Parents' concerns about Student's Geometry class and which math class Student should take the following school year were thoroughly discussed and considered by the team at both IEP team meetings.

The evidence is clear that Parents were given an opportunity to voice their concerns, and all of Parents' concerns were discussed and addressed by the IEP team in February and March 2023. These actions satisfied Perris District's obligation to ensure parental participation in the IEP process. Moreover, Student failed to introduce any evidence that suggested the offer of a FAPE made in the February 27, 2023 IEP was predetermined. There was no evidence that Perris District made a "take it or leave it" offer of a FAPE in the February 27, 2023 IEP.

## CONCLUSION ON ISSUE 2(e)

The evidence established Parents were given the opportunity to, and did, participate in the IEP process. There was no evidence that the offer of a FAPE in the February 27, 2023 IEP was predetermined by or among any IEP team members. Accordingly, Student failed to meet her burden of proof and Perris District prevailed on Issue 2(e).

## CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

### ISSUE 1(a):

Perris District did not deny Student a FAPE in the 2021-2022 school year in the IEP dated February 10, 2022, by failing to offer a one-to-one aide.

Perris District prevailed on issue 1(a).

### ISSUE 1(b):

Perris District did not deny Student a FAPE in the 2021-2022 school year in the IEP dated February 10, 2022, by failing to offer an appropriate individual transition plan.

Perris District prevailed on issue 1(b).

### ISSUE 1(c):

Perris District did not deny Student a FAPE in the 2021-2022 school year in the IEP dated February 10, 2022, by failing to offer appropriate goals in the areas of math, writing, and transition.

Perris District prevailed on issue 1(c).

#### ISSUE 1(d):

Perris District did not deny Student a FAPE in the 2021-2022 school year in the IEP dated February 10, 2022, by failing to offer an extended school year program for summer 2022.

Perris District prevailed on issue 1(d).

#### ISSUE 1(e):

Perris District did not deny Student a FAPE in the 2021-2022 school year in the IEP dated February 10, 2022, by predetermining the offer of a FAPE by failing to consider Parent's request for tutoring services.

Perris District prevailed on issue 1(e).

#### ISSUE 2(a):

Perris District did not deny Student a FAPE in the 2022-2023 school year in the IEP dated February 27, 2023, by failing to offer a one-to-one aide.

Perris District prevailed on issue 2(a).

#### ISSUE 2(b):

Perris District did not deny Student a FAPE in the 2022-2023 school year in the IEP dated February 27, 2023, by failing to offer an appropriate individual transition plan.

Perris District prevailed on issue 2(b).

#### ISSUE 2(c):

Perris District did not deny Student a FAPE in the 2022-2023 school year in the IEP dated February 27, 2023, by failing to offer counseling services.

Perris District prevailed on issue 2(c).

#### ISSUE 2(d):

Perris District did not deny Student a FAPE in the 2022-2023 school year in the IEP dated February 27, 2023, by failing to offer an extended school year program for summer 2023.

Perris District prevailed on issue 2(d).

#### ISSUE 2(e):

Perris District did not deny Student a FAPE in the 2022-2023 school year in the IEP dated February 27, 2023, by predetermining the offer of a FAPE by failing to consider Parent's request for tutoring services.

Perris District prevailed on issue 2(e).

#### ORDER

All Student's requests for relief are denied.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Christine Arden

Administrative Law Judge

Office of Administrative Hearings